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IN THE

Supreme Court of the United States

NO. 226

MRS. CORAL B. JONES, ET AL., *Appellants*

v.

W. P. H. McFADDIN, ET AL., *Appellees*

APPELLEES' MOTION TO DISMISS OR ALTERNATIVELY TO AFFIRM THE CASE

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May It Please The Court:

The Court is respectfully requested to dismiss this appeal because the appeal does not present a substantial federal question; because no federal question was properly raised or expressly passed on; and because the judgment of the Texas courts rests on an adequate non-federal basis, the questions presented by appellants being so unsubstantial as not to need further arguments.

Appellees deny the contentions of appellants which, as we understand them, are:

1.

Under the treaty signed in 1848 by the United States of America and the Republic of Mexico, at the City of Guadalupe Hidalgo, the title to the land in controversy could not have been acquired by the adverse possession of appellees and their predecessors as against the then owners, their heirs or Mexicans subsequently acquiring it.

2.

The doctrine of mortmain has been and is in force in Texas and has prohibited corporations from acquiring title to the land by adverse possession under the laws of the State of Texas.

THE TREATY OF GUADALUPE HIDALGO

This Court for want of jurisdiction dismissed the writ of error in *Elisha Basse v. City of Brownsville*, 154 U.S. 610, 14 S.Ct. 1195, 22 L.Ed. 420. The brief opinion by Mr. Chief Justice Waite is:

> "This writ of error is dismissed for the want of jurisdiction. In McKinney v. Saviego, 18 How., 240 [59 U.S., XV., 367], it was decided that the Treaty of Guadaloupe Hidalgo had no relation to property included within the State of Texas. The record does not show that any question was made in the court below, or decided as to the effect of the Act of 7th February, 1853, upon the plaintiff's title. So far as anything does appear, the case was disposed of without reaching that question."

This Court in *McKinney v. Saviego*, 18 How. 235, 15 L.Ed. 365, had before it the identical third clause in the

Treaty of Guadalupe Hidalgo upon which appellants rely, as follows:

> "In said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to the citizens of the United States."

With respect to it Mr. Justice Campbell wrote:

> "To what territories did the high contracting parties refer to in this article? We think it clear that they did not refer to any portion of the acknowledged limits of Texas. The territories alluded to are those which had previously to the Treaty belonged to Mexico, and which, after the Treaty, should remain within the limits of the United States. The Republic of Texas had been many years before acknowledged by the United States as existing separately and independently of Mexico; and as a separate and independent State it had been admitted to the Union. The government of the United States, by that Act, had conferred upon the population established there all the privileges within their constitutional competency to grant.
>
> "The various stipulations contained in this article are wholly inapplicable to the persons, who before the revolution in Texas, had been citizens of Mexico, and who, by that revolution, had been separated from it.
>
> "The right of property, to which this article of the Treaty was designed to afford a guarantee, extended to property of every kind which at its date belonged to Mexican citizens ('now belonging to Mexicans')

> not established within the territories then ceded to the United States. In the present instance, the Republic of Texas had acquired title many years before, and the land at the date formed its public domain."

This Court denied certiorari (331 U.S. 808, 91 L.Ed. 1828) in the case of *Amaya v. Stanolind Oil & Gas Company*, 158 F.2d 554, adjudicating the identical question, whether adverse possession of lands in Texas was prohibited or affected by the Treaty of Guadalupe Hidalgo. The opinion of Circuit Court of Appeals for the Fifth Circuit states:

> "We are convinced, however, as was the lower Court, that there is nothing in the Treaty that suggests that the property of Mexican citizens would not be subject to the valid, and non-discriminatory, property laws of the State of Texas" (paragraphs 6, 7, page 557).

And on next page of the opinion it is stated:

> "Since the obligation of the treaty was substantially the same as is required by international law, and since international law does not prohibit the successor sovereign from subsequently enacting legislation in due course as to title to lands, there seems to be no reason to hold that the treaty prohibited this merely by the use of the word 'inviolably'.
>
> "The fundamental purpose of that provision of the treaty was to secure Mexicans in their title and to guarantee to them in that respect the same protection of law that it extended to the citizens of the United States. Baldwin v. Goldfrank, 88 Tex. 249, 31 S.W. 1064, text, 1067; Chadwick v. Campbell, supra; Ely's Adm'r v. United States, 171 U.S. 220, 18 S.Ct. 840, 43 L.Ed. 142; Leitensdorfer v. Webb, supra; Todok v. Union State Bank, 281 U.S. 449, 50 S.Ct. 363, 74 L.Ed. 956.

> "It should not be overlooked that the main purpose of statutes of limitation relating to land is to put titles at rest, and that such statutes are great healers of weak titles, the benefits of which, under the treaty and under the statutes of Texas, were available to Mexicans and Texans alike."

The opinion of the District Judge in the *Amaya* case, 62 F.Supp. 181, discusses at length the history and meaning of said Treaty.

MORTMAIN

No common law provision (*Perrin v. Carey*, 24 How. 495, 16 L.Ed. 701, 709) or constitutional or statutory provision has ever been applied as an impediment to, or in denial of, the right to acquire and own real property in the Republic or the State of Texas.

The Act of the Legislature of the State of Texas of December 2, 1871, Chapter LXXX, 7 Gammel's Laws of Texas, pp. 66 to 82, "An Act Concerning Private Corporations", in enumerating the powers of a corporation in Article 3, §11, subdivision 4, provided that every corporation, as such, has power "to hold, purchase, sell, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real and personal or mixed, as shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due to or belonging to the corporation".

The above was re-enacted by the Legislature of the State of Texas by "An Act Concerning Private Corporations" approved April 23, 1874, 8 Gammel's Laws of Texas,

pp. 120-141, in Article 3, §11, subdivision 4, and made the same provision with respect to the power of corporations to hold and purchase realty as above quoted.

Approximately ten years passed after the above enactment before W. P. H. McFaddin purchased the league of land in controversy. In the exercise of their jurisdiction the Texas courts in this case determined that McFaddin purchased the land on December 31, 1883, that his predecessors purchased it from William (Pelham) Humphries in 1836, that McFaddin recorded his deed and enclosed the entire league in 1884, that before 1901 he executed an oil and gas lease in which year the famous Spindletop oil field was discovered on the land, and that since there has been continuous mineral production therefrom.

This Court knows undoubtedly that in Texas corporations are entitled to purchase, acquire by adverse possession, and to use and enjoy lands generally as other persons. Authorities would be superfluous.

If McFaddin had not begun his possession which has never ended but instead a corporation had acquired the title, but doubt exists as to the right of the corporation to retain and hold the land, only the State but not appellants could question such right in the corporation. *Strayhorn v. Jones,* 157 Texas 136 at page 149, 300 S.W.2d 623 at page 632; *O'Keefe v. Robison,* 116 Texas 398, 292 S.W. 854; *State v. Bradford,* 121 Texas 515, 50 S.W.2d 1065 at 1069; *Fitzgerald v. Robison,* 110 Texas 468, 220 S.W. 768.

The Court has observed that no complaint is made by appellants that Mortmain could have prevented Mr. McFaddin, his heirs, and other natural persons from acquiring the land by their 75 years adverse possession.

CONCLUSION

It is respectfully submitted that no federal question arises under appellants' contentions with respect to the Treaty of Guadalupe Hidalgo, and that this question is so unsubstantial, in fact has already been adjudicated by this Court to be so wholly without merit, as to need no further argument.

It is respectfully submitted that the attempted injection of the doctrine of mortmain presents no federal question that could affect the judgment of the Texas courts on the adequate non-federal basis of which appellants may not here complain.

Accordingly, it is prayed that the appeal herein be dismissed or in the alternative that the decision of the Texas courts in all things be affirmed.

Respectfully submitted,

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Attorneys for Appellees

I, the undersigned, Major T. Bell, an attorney of record and for the appellees herein, depose and say that on the _____ day of June, 1965, I served copies of the foregoing Motion to Dismiss, or Alternatively to Affirm the Case, on W. T. Weir, Post Office Box 72, Carthage, Mississippi, and William Glover, 2239 West Alabama Street, Houston, Texas, 77006, the attorneys of record for the appellants herein, by depositing the same in the United States Post Office at Beaumont, Texas, with air mail postage prepaid, addressed to them and to each of them.

MAJOR T. BELL
First Federal Savings Building
Beaumont, Texas 77701

SUBSCRIBED and SWORN TO before me at Beaumont, Texas, on this _____ day of June, 1965.

Notary Public in and for
Jefferson County, Texas.

My Commission expires June 1, 1967.

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NO. 226

MRS. CORAL B. JONES, ET AL
Appellants
VS.
W. P. H. McFADDIN, ET AL
Appellees

APPELLANTS' ANSWER OF APPELLEES' MOTION TO DISMISS

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IN THE SUPREME COURT OF THE UNITED STATES

NO. 226

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Appellants

VS.

W. P. H. McFADDIN, ET AL

Appellees

APPELLANTS' ANSWER OF APPELLEES' MOTION TO DISMISS

MAY IT PLEASE THE COURT:

We make the following as a reply to the appellees motion to dismiss this cause. With reference to the Treaty of Guadulupe Hidalgo, we submit that this treaty protects the claimants of the land involved hereinbefore described. Article 6, Section 2, of the Constitution of the United States reads as follows to-wit:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding."

Section 3 also reads as follows to-wit:

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several states shall be bound by Oath of Affirmation, to support this Constitution; but no religious Test

shall ever be required as a Qualification to any Office or public Trust under the United States."

The treaty of 1848 that the Guadulupe Hidalgo we contend is still the law of the land. The Supreme Court of Texas had all these things before them, but they did not pass on them and all they said were the following words and figures to-wit: "This case is dismissed for lack of jurisdiction," and that is all they said.

We contend that it is still the law and will always be the law. Appellees cite several cases but none of the courts had any authority to change the treaty of the Constitution of the United States already cited hereinbefore. As to the doctrine of Mortmain, it was the law of Spain and Mexico, and the Province of State of Coahuila and Texas long before this grant was issued.

We respectfully submit that this grant of land was made by the competent authority of the State and under the colonization laws of Lorenzo de Zavala which had full authority to judicially make this grant and is a judiciary act which cannot be impeached or changed by any court. They had full jurisdiction to act in this case.

The grant as translated is as follows to-wit:

7-16-57 Pelham Humphries (21.00) Vol. 22 pp. 307-310

THIRD SEAL FOR THE BIENNIAL TERM OF

(SEAL)

TWO REALS 1834 and 1835

Petition
No. 118

Honorable Special Commissioner of the Enterprise of the Citizen of Lorenzo de Zavala:

William

I, Pelham Humphries, a native of the United States of the North, with due respect appear before you and say: That, attracted by the generous provisions of the Colonization Laws of this State, I have come with my family, consisting of two persons, to establish myself in the aforesaid Enterprise of His Excellency, Lorenzo de Zavala, if you should see fit, in view of the certificate I send you herewith, to admit me as a colonist, being pleased to concede to me

one league of land in the vacant tracts of said Enterprise; for which favor I shall be eternally grateful.

San Augustine, September 27, 1834.

Sign of x cross of
Pelham Humphries

Decree:

Let the interested party proceed with the accompanying certificate to the Honorable Empresario to whom it corresponds that he may report on the foregoing petition.

San Augustine, September 27, 1834.

Jorge Ant. Nixon (Paraph) Comr.

Honorable Commissioner:

I certify that the interested party is one of the colonists I have introduced in fulfillment of the contract I made with the Supreme Government of the State on March 12, 1829. Therefore, I beg of you to please grant his request and issue the order of survey to the surveyor to whom the solicited tracts are assigned.

A. Hotchkiss, Attorney-in-Fact
(Paraph)
of his Excellency, Lrenzo de Zavala
(Paraph)

Decree:

Nacogdoches, September 30, 1834.

On being presented and admitted with the accompanying documents, Surveyor Citizen Arthur Henrie shall have the survey made of the league of land the interested party may designate, provided it be entirely vacant and he shall examine the notes which are to be translated by Citizen Juan Leplicher; and proceedings shall follow later as may be most suitable. Thus I resolved and signed with two witnesses according to the law.

Jorge Ant. Nixon (Paraph) Comr.

Attendant Witness
Joseph Carriere
(Paraph)

Attendant Witness
Eligio Albarado
(Paraph)

Field

Notes:

Honorable Commissioner:

The tract surveyed for Colonist Pelham Humphries is situated on the margin of the marsh on the west side of the Neches River, and a landmark common to the John A. Veatch and James Bullock surveys is its 1st corner, from which a post oak, 9 inches in diameter, bears south 10° west 25 3/10 varas distant. Thence south 45° west 7,111 varas were surveyed and the 2nd landmark was raised in a prairie. Thence east 7,320 varas were surveyed and the 3rd landmark was raised in a prairie. Thence north 5,218 varas were surveyed and the 4th landmark was raised in a marsh. Thence west 2,300 varas were surveyed and the 5th and last landmark was raised. Thence south 198 varas were surveyed to the 1st landmark, completing thus the league of land you ordered me to have surveyed. Of the aforesaid tract 8 labors belong to the class of arable land and the remaining 17 to that of pasture land; its configuration is that which I send you in duplicate herewith. Nacogdoches, February 14, 1835.

J. Leplicher, Translator (Paraph)

Arthur Henrie, Surveyor (Paraph)

THIRD SEAL

FOR THE BIENNIAL TERM OF

(SEAL)

TWO REALS

1834 AND 1835

Decree:

Town of Nacogdoches, 14th of February of 1835.

The survey of the league of land for colonist Pelham Humphries being concluded, let the corresponding title be issued, and of the two plats returned by the Surveyor, let one be added to this file of documents and the other to the testimonio, both being paraphed by me. Thus I resolved and signed with two witnesses according to law.

Jorge Ant. Nixon (Paraph) Comr.

Attendant Witness
Joseph Carriere
(Paraph)

Attendant Witness
Eligio Albarado
(Paraph)

Title of
Possession:

Citizen Jorge Antonio Nixon, Special Commissioner of the Supreme Government of the State of Coahuila and Texas for the distribution and possession of lands and the issuance of titles to the colonists in the Enterprise of His Excellency, Lorenzo de Zavala:

Whereas Pelham Humphries has been admitted as a colonist in the Colonization Enterprise contracted by the Empresario, the Most Excellent and Honorable Lorenzo de Zavala, with the Supreme Government of the State on March 12, 1829, and the aforesaid Pelham Humphries having fully established that his family consists of two persons, and finding in him the requisites prescribed by the Colonization Law of March 24, 1825: in conformity with the said law and instructions which govern me, in the name of the State I concede, to, confer upon, and put the aforesaid Pelham Humphries in real and personal possession of one league of land situated on the margin of the marsh on the west side of the Neches River, the boundaries of which are delineated on the plat and in the field notes set down by the Surveyor, Citizen Arthur Henrie, as is seen in this file of documents. Of the aforesaid tract 8 labors belong to the class of arable land and the remaining 17 to that of pasture land, which serves as classification for the sum he shall pay the State according to Article 22 of said law, conceding to him the terms it designates under the penalties therein established; he being notified that within one year he shall construct landmarks of lime and stone at each corner of the tract, that he shall settle and cultivate it in accordance with the requirements of the aforesaid law, complying scrupulously with the orders therein and elsewhere, and that he shall never convey it in mortmain.

Therefore, exercising the powers vested in me by the same law and consequent instructions, I issue the present title and order the testimonio made of it and delivered to the interested party in order that he may possess and enjoy the tract—he, his children, heirs and successors, or whoever from him or from them shall have cause or right. Given in the Town of Nacogdoches on the 14th day of the month of

February of 1835, which I sign with two attendant witnesses according to the law. Interlined—Humphries—valid: I certify.

Jorge Ant. Nixon (Paraph) Comr.

Attendant Witness
Joseph Carriere
(Paraph)

Attendant Witness
Eligio Albarado
(Paraph)

GENERAL LAND OFFICE

Austin, Texas, July 16, 1957.

I certify that the foregoing four pages contains a correct translated copy of the P. Humphries title existing in the Spanish Archives of this office in volume 22, pages 307 through 310.

/s/ John G. Farmer
Spanish Translator.

I, J. Earl Rudder Commissioner of the General land Office of the State of Texas, do hereby certify that John G. Farmer whose signature is subscribed to the foregoing certificates, is the Spanish Translator of this office, duly qualified according to law, and that his official acts, as such, are entitled to full faith and credit.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of said office to be affixed, the day and date first above written.

/s/ J. Earl Rudder.
Commissioner

7-16-57 Pelham Humphries (21.00) Vol. 22 pp. 307-310

THIRD SEAL (SEAL) FOR THE BIENNIAL TERM OF

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J. Leplicher, Translator
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Arthur Henrie, Surveyor
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Joseph Carriere
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Title of

Possession:

Citizen Jorge Antonio Nixon, Special Commissioner of the Supreme Government of the State of Coahuila and Texas for the distribution and possession of lands and the issuance of titles to the colonists in the Enterprise of His Excellency, Lorenzo de Zavala:

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Therefore, exercising the powers vested in me by the same law and consequent instructions, I issue the present title and order the testimonio made of it and delivered to the interested party in order that he may possess and enjoy the tract he, his children, heirs and successors, or whoever from him or from them shall have cause or right. Given in the Town of Nacogdoches on the 14th day of the month of February of 1835, which I sign with two attendant witnesses according to the law. Interlined—Humphries—valid; I certify.

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IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of said office to be affixed, the day and date first above written.

/s/ J. Earl Rudder.
Commissioner.

Finally, we respectfully say that the treaty still stands as the law of the land. We respectfully submit that the courts of Texas had no authority to change the laws of Texas. Neither does the legislature have the right to change the laws. This land could not be sold in Mortmain. The only way it could be disposed of is according to this testimonio made in order that he might possess and enjoy the tract. He, his children and successors, or whoever from him or from them shall have cause or right. Pelham Humphries nor any of his heir have ever disposed of this land in any manner whatever. Therefore, the title of the said land is still in the heirs of Pelham Humphries. We allege and charge that none of his heirs ever sold or disposed of the land in any way. The law was passed by the state of Texas but neither the state of Texas nor the legislature have the right. No judge nor any court could pass adversely to these lands. Neither could any court change the law. When Texas was admitted, it became subject to the Constitution of the United States and it could not infringe on the rights of Pelham Humphries or his descendants.

We therefore, respectfully pray that the Appellees motion be over-ruled.

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Beaumont, Texas 77701

BLADES, CRAIN, SLATOR
& WINTERS
1009 San Jacinto Building
Houston, Texas 77002

WILLIAM G. ROSS, JR.
815 American Natl. Bank Bldg.
Beaumont, Texas

VINSON, ELKINS, WEEMS
& SEARLS
2013 First City Natl. Bank Bldg.
Houston, Texas 77002

PAT T. PEYTON, JR.
1111San Jacinto Bldg.
Beaumont, Texas

KEITH, MEHAFFY,
McNICHOLAS & WEBER
240 Kaufman Trust Bldg.
Beaumont, Texas

W. B. LANGWORTHY
P. O. Box 336
Angleton, Texas

McLEOD, MILLS, SHIRLEY
& ALEXANDER
801 Santa Fe Building
Houston, Texas 77002

DOYLE McDONALD
315 Cotton Exchange Building
Galveston, Texas

ELDRIDGE, GOGGANS, DAVIDSON & SILVERBERG
1217 First National Bank Bldg.
Dallas, Texas 75202

WILLIAM B. FERGUSON
1708 First City Natl. Bank Bldg.
Houston, Texas 77002

FRED A. LANGE
Post Office Drawer 2100
Houston Texas 77001

SAMUEL LIPSCOMB
395 10th Street
Beaumont, Texas

MOORE & MOORE
1109 Petroleum Bldg.
Beaumont, Texas

CLARK MURRAY
Post Office Box 246
Floresville, Texas

EDGAR PFEIL
Post Office Box 743
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JOINER CARTWRIGHT, JACK HARDY and J. L. LyBRAND
P. O. Box 2831
Beaumont, Texas

E. W. EASTERLING
711 Beaumont Savings Building
Beaumont, Texas

STRONG, PIPKIN, STRONG & NELSON
Post Office Box 1632
Beaumont, Texas

GEORGE A. WELLER
Goodhue Building
Beaumont, Texas

THOMAS H. LEE
1527 Chamber of Commerce Building
Houston, Texas 77002

JESSE J. LEE
JAMES W. LEE
1504 Chamber of Commerce Building
Houston, Texas 77002

Attorneys for Appellees.

I, the undersigned, W. T. Weir, attorney for appellants, herein depose and say that on the_____day of July, 1965, I served a copy of the following Answer to the Motion of the appellees herein, by depositing the same in the United States Post Office at Carthage, Mississippi with air mail postage prtpaid, addressed to them and to each of them.

W. T. Weir
P. O. Box 72
Carthage, Mississippi

Subscribed and sworn to before me at Philadelphia, Mississippi, on this_____day of July, 1965.

Notary Public of Neshoba County, Miss.
My Commission expires Feb. 15, 1966

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